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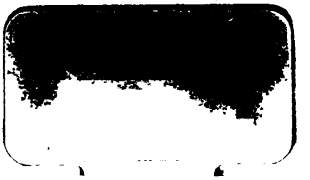

Free Ships under Enemy's Flag

By

L. K. Aegidi and A. Klauhold.

Published under the direction of the Bremen Chamber of Commerce.

Translation from the "Staats-Archiv."

HAMBURG.

Otto Meissner.

1866.

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The seven Powers, which concluded the Treaty of Paris, came to an agreement, in case of future wars, by adopting the Declaration of the 16th of April 1856 respecting Maritime Law [No. 1] *), and invited those States, which had not taken part in the Congress, to give their formal and solemn adhesion to the four principles, the indivisibility of which being maintained, mentioned in the Declaration [No. II]. The German Confederation and the several German States, Belgium, Denmark, Greece, the Netherlands, Parma, Portugal, Rome, Sweden and Norway, Switzerland, the Two Sicilies, Tuscany, the Argentine Republic, Brazil, Chili, Ecuador, Guatemala, Hayti and Peru declared their adhesion [No. III]. The Brasilian Government, in doing so, suggested those further relaxations in the international code, which from an other quarter had been advanced as the condition for acceding to the Paris Declaration, and the attainment of which has since then been the object of both practical and theoretical endeavours [No. III, Note]. The United States of America had namely in a Despatch of July 14, 1856, addressed to those Governments, which had been invited to give their adhesion to the Paris Declaration, advised them to hesitate in acceding to the proposition, by pointing out the incompatibility of the Declaration with existing treaties, and by adducing that commercial States,

*) The numbers refer to the Documents annexed to the German Edition.

which are not burdened or may not choose to burden themselves with large naval establishments, could not surrender the incontestable right to employ privateers (which right Count Walewski in the 22d sitting of the Congress of April 8, 1856, designated as *„piraterie organisée“*), without going one step further and insisting upon the abolition of the right of seizure by public armed vessels, and thereby securing the full application of the principle declaring the inviolability of all private property on the ocean in time of war. [No.IV]. These views of the American Government were more fully developed in the celebrated Circular-Note, commonly called „Marcy's Note to Sartiges“, which the Secretary of State addressed to the Ambassadors of Austria, France, Prussia, Russia and Sardinia at Washington on the 28th of July 1856 [No. V.] *) The Note commences by stating that the United States cannot agree, first, to the resolution, come to by the Congress, to maintain the indivisibility of the four principles, and, second, to the subsequent proposition, that in future the Powers, which have signed or may accede to the Declaration, shall not enter into any treaty arrangements, in regard to the application of the right of neutrals in time of war, which do not rest on the four principles, which are the object of the said Declaration. The Note approves the second and third principles, which it states, corresponded with the views always expressed by the United States**) and which had been embodied in the Treaties, concluded with Russia on the 22d of July 1854, and with the Two Sicilies on the 13th of January 1855, and for the general adoption of which negotiations were pending, that, but for the proceedings of the Paris Congress, would ere now have been brought to a successful termination. The Note considers the fourth principle as futile and worthless, and then examines the first principle concerning the right to employ privateers. It is maintained at great length, that this right is as clear as it is incontestable, and as well sustained by practice and by public opinion as any other right to be found in the maritime code, and that it is indispensable for upholding the freedom of the seas. The Note

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*) The Note, according to the Report of the Bremen Minister Resident, was transmitted on the 6th of August to the French, Prussian and Russian Minister.

**) „A doctrine which, from the very commencement of our being, has been a cherished idea of the statesmen of this country.“ Message of President Pierce, December 4, 1854. [No. LVI, 7.)

regrets that the general adoption of the second and third principles should be endangered by uniting them to the first inadmissible principle, and by making the failure of all the necessary consequence of the rejection of the one. To the three last principles there would not probably be a serious objection from any quarter; but to the first a vigorous resistance must have been anticipated. The Declaration stated no reasons for the abolition of privateering, but it was to be presumed that the desire to exempt private property from hostile seizure to the extent it is usually exempted on land was the chief inducement. But such a desire, as already explained in the Message of the President in 1854,*) could not be carried out by the abolition of privateering alone, it was equally required, to provide, that private property should not be seized or molested by ships of war, in fact, the full immunity of private property upon the ocean should be acknowledged by international treaty. The United States considered powerful navies and large standing armies to be detrimental to national prosperity and dangerous to civil liberty; they could, therefore, never be brought to acquiesce in any change in international law, which might render it necessary for them to change their traditional policy and assume a military attitude, or become defenceless against States possessed of a powerful navy. The latter might easily surrender the right to employ privateers, provided the States, whose naval forces are of less power and extent, did the same; for they would only augment their ascendency on the seas and gain the dominion of the ocean, which was the common property of all nations. Such a dominion was not compatible with the freedom of the seas and arose mainly from the practice of subjecting private property on the ocean to seizure by belligerents. The President, therefore, proposed to add to the first proposition in the Declaration the following words: „And that the private property of the subjects or citizens of a belligerent on the high seas shall be exempted from seizure by public armed vessels of the other belligerent, except it be contraband.“ Thus amended, the Government of the United States would be ready to adopt the first principle and with it the

*) Prussia had agreed to the invitation of the United States to conclude a treaty in regard to the right of neutrals similar to the one concluded with Russia on July 22, 1854, but proposed to abolish at the same time the right to issue letters of marque. To that proposition the above cited answer was given.

whole Declaration. Without such amendment the United States would reject the first proposition and only accept the three other principles.

It was to be expected that further negotiations would be opened. However, in the meantime, neither the United States, nor Mexico, nor Spain had joined the great community of those States, which recognise and observe the Paris Declaration as a part of the international code.

It may here be remarked in justification of the American proposal, that, two months before Mr. Marcy wrote his despatch, Lord Clarendon declared in the House of Lords, that England by the abolition of privateering had gained more than she had lost by adopting the principle „free ships, free goods"; and the Earl of Derby added: that the necessary consequence of the Paris Declaration must lead to the exemption of all private property on the ocean from seizure and to allowing all merchant vessels in time of war to continue their journey without molestation by men-of-war.

The doctrine of the immunity of private property on the ocean in time of war, promulgated in theory towards the middle of the last century by the Abbot Bonnot de Mably,*) and subsequently affirmed by the Priest Galiani**), was for the first time officially recognized in the 23d Article of the Treaty, concluded by Frederick the Great and Franklin between Prussia and the United States in the year 1785 [No. LIV]. ***)

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*) Droit public de l'Europe fondé sur les traités, 2me édition, 1748, t. II, p. 310.

**) De' doveri de' principi neutrali verso i principi guerregianti e di questi verso i neutrali 1782, capo X, § 2 del corseggiare, p. 429—436. p. 277, Note. See also Linguet, Annales politiques t. V., p. 505.

***) Martens Recueil des Traités t. IV, p. 47. On the renewal of the Treaty in 1799, only the immunity of private property on land has been recognized in Article 23; see Martens Receuil des Traités v. VI. p. 689. The last treaty, concluded between Prussia and the United States on the 1st of May 1828, corroborates Articles 13 to 24 of the treaty of 1799, but only renews Article 12 of the treaty of 1785, which abolishes the confiscation of contraband of war; see Martens v. VII p. 619. This principle, which Franklin called „his Quaker notions", has not been embodied in any other treaty concluded by that Statesman except in the one with Prussia; see C. F. Wurm: On the Neutrality of German Maritime Commerce in time of war. Hamburg, 1841, p. 46. 47. Jefferson remarks in his Memoirs, v. I, p. 50: "Old Frederick of Prussia met us cordially and without hesitation."

In the year 1792, when France was already at war with the greater part of Europe, Deputy Kersaint, on behalf of the united committees for Trade, Marine and Foreign Affairs, in the sitting of the National Assembly of May 30 moved a resolution: that a Royal Decree, abolishing privateering and declaring the immunity of private property on the ocean in time of war, should be issued. The Assembly, on the motion of Deputy Vergniaud, resolved, not to come to any vote on the resolution but to request the Government to open negotiations to that effect with the other powers. (No. LV, 1). In the debate the following principle was laid down, that individuals *„ne doivent ni s'envisager, ni se traiter comme ennemis."* This principle in all its consequences was especially approved of by those, who by privateering had gained large sums at the cost of the enemy's private property.*)

Some days after this resolution had been passed by the Legislative Assembly, and just before his resignation, the then Minister for Foreign Affairs, General Dumouriez, opened the negotiations on June 14, 1792, by addressing two despatches, one to the Marquis de Chauvelin, who together with Monsieur de Talleyrand was then on a mission in England, the second to Monsieur de Ternant, the French minister at Washington. The Marquis de Chauvelin in transmitting a copy of this despatch to Lord Grenville added: *„Sa Majesté ne se dissimule pas que l'état présent de l'Europe peut apporter quelque retard du prompt accomplissement de ses désirs."* Lord Grenville gave no reply to the communication. The successor of Dumouriez, the Marquis de Chambonas, who came into office on the 16th of June, addressed in the name of Louis XVI. a circular despatch, dated June 19, 1792, on the subject to all the French ambassadors, accredited to the different foreign courts, and also to Monsieur le Hoc, the French representative at Hamburg. The Spanish Government replied, that His Catholic Majesty was willing to accede to the French proposition, *„dès que nous serions d'accord avec l'Angleterre."* With Russia the diplomatic relations had in the meantime been suspended, and Austria was

*) The member for Dunkirk, Mr. Emméry said: *„Je suis d'une ville qui a fait le plus d'armements de ce genre. Les 1000 ou 1200 corsaires qu'elle a armés dans la dernière guerre, ont fait plus de mal à l'Angleterre, que les marines royales des deux maisons de Bourbon réunies. Cependant cette ville ne désire pas la continuation de ce genre d'armement."* „Moniteur" of June 1, 1792, p. 634.

already at war, however, she agreed to recognise the abolition of privateering. *)

Mr. Jefferson, then Secretary of State in the Cabinet of George Washington, in reply to the French proposition, stated, that the United States should be prepared to open negotiations with reference to the abolition of privateering and *„sur d'autres principes tendant aussi à diminuer les occasions et les calamités de la guerre,"* provided the new treaty of commerce, for which the Americans were very anxious, was accepted by France. Tuscany, Genoa, Naples, Portugal and Denmark declared their readiness to accede to the principles laid down in the French circular despatch. The Note, which the French Minister accredited to the Circle of Lower Saxony, Monsieur le Hoc, addressed on the 15th of July 1792 to the Hanse Towns, proposed the abolition of privateering in the form of an Additional Article to the existing commercial treaty between France and the Hanse Towns of the year 1719, especially to the treaty between Hamburg and France of April 1, 1769. Hamburg was the only State which bound itself formally; the Senate tendering their warm thanks to King Louis XVI. for the initiative he had taken in regard to the great benefit, that would accrue to European commerce from *„l'abolition de ce fléau destructeur."* The Senate of Lubeck expressed themselves favorably but undecidedly, and Bremen gave an evasive answer on the 22d of August 1792. The proceeding adopted by Hamburg made a great impression in France; a Decree

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*) Austria had already in May adopted a measure to that effect. In the sitting of the French National Assembly of June 1, 1792, the member for Dunkirk, Mr. Emméry, requested leave to read a Declaration, *„que vient de faire le Roi de Hongrie, et dont un exemplaire vient de me parvenir de Bruxelles"*. This Austrian Declaration stated, that *„voulant maintenir, autant que les circonstances pourront le permettre, les liaisons de commerce, qui subsistent entre la France et les États appartenant à la maison d'Autriche, les vaisseaux français seront reçus comme par le passé dans le port d'Ostende, pourvu qu'ils ne soient pas armés en guerre, ni chargés de munition, et qu'ils y pourront librement et en toute sûreté décharger leur cargaison, si toutefois la France désire de son côté prendre les mêmes mesures."* The reading of the declaration was received with cheers and a member remarked: *„Ainsi l'Assemblée Nationale reçoit des Autrichiens une leçon de philosophie."* The declaration was referred to the committee for foreign affairs (Moniteur, June 2, 1792, p. 636.) Monsieur le Hoc, the French ambassador to the Lower Circle of Saxony, in the note, which he addressed on July 1, 1792, to the Hanse Towns, called their attention also to the Austrian note and to the circumstance, that the English Government had forbidden English subjects to take service on board of belligerent privateers.

of the Convent, passed on the 29th of March 1793, declared, as a measure of just reciprocity, *„la course abolie à l'égard des navires de la ville de Hambourg et de ceux des villes hanséatiques.“* By this decree France conceded an exceptional position to the Hanse Towns, for, in retaliation to the refusal of the great naval powers, the decree by the Conseil exécutif provisoire on the 7th of January 1793, and the statute of January 31, 1793 authorized French subjects to resort to privateering. *)

Napoleon would not remain behind the sentiments of humanity expressed by Louis XVI and the National Assembly. On the installation of the new Prize-Court, which took place on the 14th *Floréal* of the year VIII (Mai 3, 1800), Commissioner Portalis was instructed to expound in his opening speech the views and principles of the Government (No. LV. 2). The Report, which Monsieur de Talleyrand addressed to the Emperor on the 20th of November 1806, expressed similar views and laid down the principles, which, the day after, were indirectly officially recognised in the famous Decree, dated Berlin the 21st of November 1806, which established the Continental System (No. LV, 4). **)

Napoleon further, on two occasions, expressed himself very strongly in favor of the immunity of private property upon the sea, first, in a letter, which he dictated to Count Champagny, and which the latter transmitted on the 22d of August 1809 to the Minister of the United States at Paris, Mr. Armstrong, and, secondly, in his Memoirs.

In the letter to Mr. Armstrong the following remarks occur: *„Les mers n'appartiennent à aucune nation; elles sont le bien commun des peuples et le domaine de tous. Les bâtiments de commerce ennemis appartenant à des particuliers doivent être respectés. Dans toutes ses conquêtes la France a respecté les propriétés particulières .... Tels sont les principes de l'Empereur sur les usages et les droits de la guerre maritime. Lorsque la France aura acquis une marine proportionnée à l'étendue de ses côtes et de sa position, l'Empereur*

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*) *Le Beau, nouveau code des prises, Paris, an IX., v. 3, p. 318. 319. 320—323.* However, the favor granted to the Hanse Towns was but of a short duration; already by the law of June 9, 1793 their vessels were again declared lawful prizes; *nouveau code des prises, p. 360.*

**) See also Decree of Milan, December 17, 1807.

mettra, de plus en plus ces maximes en pratique et fera tous ses efforts pour en rendre l'adoption générale."

In his Memoirs (v. III, c. 6, §. 1 p. 301) Napoleon says: „*Il est à désirer, qu'un temps vienne, où les mêmes idées libérales s'étendent sur les guerres de mer et que les armées navales de deux puissances puissent se battre sans donner lieu à la confiscation des navires marchands et sans faire prisonniers de guerre de simples matelots de commerce ou les passagers non militaires. Le commerce se ferait alors sur mer entre les nations belligérantes comme il se fait sur terre au milieu des batailles que se livrent des armées.*"

The Restauration also took an opportunity to act in the same spirit, though in general it was certainly not inclined to follow in the steps of its predecessors. In the war with Spain in 1823, a Royal Ordinance enacted that the Royal Marine should take no Spanish vessels other than of war, and to detain, upon the principle of blockade, no merchant vessel, whether of Spain or of other nations, unless they should attempt to enter a place really blockaded by the kings naval forces, and should thus endeavour to force an effective blockade; that privateering by French subjects should be forbidden, and that no letters of marque against the commerce of Spain should be issued. [No. LVI, 4.]

Before these measures were taken a correspondence between France and England had been carried on, which, if we take a right view of its bearing, throws a new light upon several circumstances, connected with the question itself, and of a personal nature. France had requested the English Government to forbid British subjects to fit out privateers against the commerce of France, and not to permit Spanish Privateers to enter British Ports and there to dispose of French Prizes. The French Government addressed the same request to the other naval powers, stating that Spain had refused to meet her liberal concessions with reciprocity, that France therefore was under heavy disadvantages, for the mitigation of which she appealed to the equity of the neutral powers. These liberal concessions, however, did not include the exemption of private property from seizure by French public armed vessels, they merely surrendered the right to resort to Privateers. This is very clearly stated in the reply, which the English Government gave to the French Ambassador in London, Vicomte de Marcellus, on the 26th of April

1823. Mr. Canning agreed to the first part of the French request, but refused to accede to the second part, and explained his refusal as follows: The navies of the two Belligerents were not equal in power and extent; if, therefore, Spain by increasing its navy through the equipment of privateers, sought to make up for the superiority of the French marine, England would act partially, should she raise objections to such a proceeding. A fair equality, added Mr. Canning, could only be established, if France also exempted the private property of Spanish subjects from seizure by her public armed vessels. Mr. Canning could not have given this reply to Monsieur de Marcellus, if France had already declared the immunity of all Spanish private property on the ocean; however, she now took that step, perhaps in consequence of the English note of April 26, 1823. The later complaint of Monsieur de Chateaubriand, that Mr. Canning never gave an answer to the French notification of this measure is easily explained. England had refused the request of France to receive with special favor a measure, which was entitled to a fair consideration, by pointing out the further step France should take, in order to deserve the special favor asked for. France took that step — but nevertheless England remained silent and did not accede to the French request. Mr. Canning, in his note of April 26, 1823, has certainly anticipated the amendment of Mr. Marcy, but not with the intention to recognize in a binding form a principle, which it did not suit his policy to entertain, but merely to make use of it, in the form of a diplomatic manoeuvre, as a cogent argument for his refusing to accede to the French request.

In the same year 1823 President Monroe recurred to the policy of the United States in regard to Maritime Law. Already in the year 1792 England had bound herself by treaty to enter, two years after the termination of the war in which she was then engaged, into negotiations with the United States, in order to determine, whether and in which cases the neutral flag should cover the enemy's goods. These negotiations were never opened; on the contrary, the difference of opinion, which existed between the two states in regard to the right of neutrals, led to another war between them. And neither did the conferences of Ghent, which ended that war, nor a later conference in 1818 bring about a satisfactory termination of the matter in dispute. However, a favorable opportunity appeared to

offer itself in the year 1823, when, after some preliminary discussions between Sir Stratford Canning and the cabinet at Washington, Mr. Rush, the American Ambassador at London, was authorized to enter into negotiations with the English Government concerning all the different political and commercial questions in dispute between the two powers. In the instructions to the Ambassador, written with a fervour that puts out of doubt the sincerity of the views expressed, the then Secretary of State, Mr. John Quincy Adams, takes his stand on the summit of Doctor Franklin's enlightened philosophy. (No. LVI, 1.) War in the present state of civilisation should be a combat between the organised Powers of the State, it should not be a Private war, that is to say, no privateering should be permitted, nor should any warfare be carried on against private property. The project of a Treaty, annexed to the despatch of July 28, 1823, contained a series of articles with a view to the protection of private property in time of war. It was proposed: „to take the first step towards the eventual abolition, by the law of nations, of private war upon the sea; all merchants and trading vessels employed in exchanging the products of different places, and thereby rendering the necessaries, conveniences, and comforts of human life more easy to be obtained, and more general, shall be allowed to pass free and unmolested, and neither of the contracting parties shall authorize their public vessels to capture or destroy them, or grant or issue any commission to any private vessels, empowering them to take such trading vessels, or interrupt such commerce.“ Mr. Adams did not confine himself to arguments on principle, he endeavoured to show, that England, in consequence of the altered state of the world, would in future be more frequently in the position of a neutral, and that, therefore, her own interests must induce her to abandon her former views. However, the negotiations came to no favorable result in respect to the different questions of Maritime Law. The most difficult of these questions, which had been one of the chief causes of the late war, was the right maintained by England, to search for and to impress English sailors on board of neutral vessels. The American plenipotentiary was instructed to make the settlement of that question the *condito sine qua non* for the entertaining of any other questions concerning Maritime Law, with the sole exception of the great principle of abolishing privateering

and the capture of private property at sea. On the question of impressment both parties retained their former views; no proposition to accomodate the matter was brought forward, and under these circumstances the English plenipotentiaries — although Mr. Huskisson, whose liberal mind was open to new ideas, was the colleague of Sir Stratford Canning — declared to be unable to enter upon the favorite project of the Americans. „Under these circumstances," states the Protocol of the 22d Conference of July 9, 1824," which prevented any present discussion of the questions of Maritime Law, there would be manifest inconvenience in now going into a question of the same class, which, besides being totally new as an object of discussion, involved a most extensive change in the principles and practice of maritime war." Mr. Rush in his report to Washington adds: „No sentiment dropped from the British plenipotentiaries authorizing the belief that they would have concurred in the object, if we had proceeded to the consideration of it; my own opinion unequivocally is, that Great Britain is not prepared to accede, under any circumstances, to the proposition for abolishing private war upon the ocean" (No. LVI, 2). This conviction may have brought it about, that in the subsequent instructions to the American Ambassadors at London, who embraced every favorable opportunity to forward by negotiations the reform of the Mercantile Law, the ideas of Mr. Adams were put aside, and the Washington Government concentrated its endeavours to enforce, at least for the benefit of neutrals, the principle that „free ships make free goods". (No. LVI, 3.)

Although it was the intention of Mr. Adams to come in the first instance to an understanding with England in regard to the ideas advanced by him, before he brought the same to the notice of the other naval powers, he yet considered it expedient, on receiving a Copy of the above mentioned Royal Decree issued by France during the war with Spain, to instruct, already on the 23d of August 1823, the American Minister at Paris to inform himself of the views entertained by the French Government. (No. LVI, 4,) Count Chateaubriand, in his reply of October 29, expressed the satisfaction France should feel, if a general agreement upon the adoption of a principle advanced by her could be brought about; the American

Chargé d'Affaires, however, gave it at his opinion, that the French Government was not inclined to bind itself by treaty, but preferred to be at liberty, in case of war, to take such measures as might be deemed expedient in the then actual state of things.

The Emperor of Russia sincerely applauded the spirit of the convention, the project of which the American Ambassador, Mr. Middleton, had communicated in a Note of December 5, 1823, to the cabinet of St. Petersburg. Mr. Middleton, in his arguments in favor of the convention, laid particular stress upon the great facility of its realization, by merely assimilating the laws of maritime to the laws of land warfare; and, in conclusion, observed, that the system now proposed by the United States was not a new one, but was derived from the policy enunciated in the first years of their independence and embodied in their first treaty with Prussia, at a time when every naval power seized private property on the ocean. Count Nesselrode, in his reply of February 1, 1824, declared the readiness of the Emperor to discuss the different articles of an act, which would be *„un titre de gloire pour la diplomatie moderne“*, as soon as the powers, whose consent he considered as indispensable, should have shown the same dispositions (No. LVI, 6). This of course, after the miscarriage of the negotiations in London and Paris, was not to be expected; and the United States *) now, during many years, concentrated their endeavours to induce Russia to agree at least to a Convention concerning the right of neutrals in time of war. However, the imperial cabinet, though always professing its approval of the principle, refused to dispose of a question relating to international law by a convention between two Powers. The American Ambassadors were of opinion, that the Emperor Nicholas, in order not to be impeded in the furtherance of his great political plans, was anxious to avoid giving further umbrage to the jealousy of England. This motive after the breaking out of the war with the Western powers in 1854 fell to the ground, and the self-interest of Russia now ur-

*) President Monroe in his Message of December 7, 1824, (the same in which he repeated his celebrated doctrine, laid down in his message of December 2, 1823: „that the United States should consider any attempt on the part of the European powers to extend their system to any portion of the Western hemisphere as dangerous to their peace and safety“) again reverted to the subject, and expressed a hope that the negotiations thereon, which had been reopened, would be brought to a successful termination.

gently demanded the conclusion of the convention, which America had so long desired in vain, and which was at last signed on the 22d of July 1854.

Germany had always sympathized with the views for a Reform of international law. In the year 1848, hundred years after the principle had for the first time been theoretically advanced, the German Central Power officially took the matter in hand. Mr. Duckwitz, the then Minister for Trade at Frankfort, states in his records of the discussions he had on the subject with the American Ambassador, Major Donalson, that it was the decided intention of the Government of the Archduke-Regent of the German Empire: „to declare the seizure of a merchant vessel by a public armed vessel an act of Piracy." This sentiment was fully approved of by the Government of the United States and the then President of the French Republic, General Cavaignac, and it was understood that Prussia, Austria and Russia would agree to the same. The Ambassador of the German Empire at Washington, Herr von Rönne, was instructed in October 1848, to propose the settlement of the question by embodying the principle in the treaty of commerce, for which he was then negotiating with the United States (No. LVII).

The principle was again reverted to in 1854, when Prussia proposed to the United States to surrender the right of privateering. The Washington Government declared themselves ready to meet the proposal under the same condition, as two years later they approved of the Paris Declaration, viz, to exempt private property on the ocean from seizure by public armed vessels. (No. LVI, 7.)

The first and only official acknowledgment of the immunity of private property on the sea in time of war in this century was embodied in the Treaty of Friendship, Commerce and Navigation, concluded between Costa Rica and Granada on the 11th of July 1856, Art. XI. „*Los dos partes*" (No. LVIII).

On the 14th of June 1856 Senator Smidt of Bremen wrote to the Hanseatic Minister-Resident at Washington, Mr. Schleiden, that the Prussian Minister there, Herr von Gerolt, who during the absence of Mr. Schleiden had officiated for him, had given it as his opinion, that the States, which had acceded to the Paris Declaration

should endeavour, as an indemnification for their surrender of the right to employ privateers, to enforce the acknowledgment of the principle, that not alone the neutral flag and neutral goods, but also all private property on the ocean, inclusive of the property belonging to the subjects of Belligerents, with the exception only of contraband of war, should be respected and protected against seizure in the same manner as private property in the enemy's country is respected and protected in land warfare, viz, to abolish the right of seizure of all private property by public armed vessels. „Undoubtedly," writes Senator Smidt, „we should accede to the principle; however, we ought not, for the sake of the *majus*, reject the *minus* offered in the Paris Declaration."

On the 6th of August 1856, the American Undersecretary of State for Foreign Affairs, General Thomas, informed the Bremen Minister-Resident, that the Washington Government had transmitted Mr. Marcy's Note of the 28th of July to all its diplomatic Agents, with instructions to invite the different states to give their adhesion to the principles developed therein with regard to the protection of all private property against seizure on the ocean, and to adopt the same in a Convention with the United States. He added, that it would afford great satisfaction to the Washington Government if the Hanse Towns should conclude such a treaty. The Bremen Minister-Resident replied, that he had no doubt that the proposition accorded with the interests of the Hanse Towns, but it was an other question, whether political considerations in deference to the great European naval powers would allow or induce them to enter upon the proposed negotiations.

In the Debate, which took place in the Washington Senate on the 11th of August 1856 upon the motion for the production of the correspondence respecting the Paris Declaration, Senators Mason and Cass defended the views of the Government in regard to privateering. (Report of the Bremen Minister-Resident, at Washington, August 15, 1856.)

On the 13th of August 1856 the Secretary of State transmitted in a Circular-Despatch a Copy of the Note of the 28th of July to the American Ministers at the States, which had not taken part in the Paris Congress, instructing them to communicate the latter to the Government to which they are accredited: „in order that,

before deciding upon the subject, the Government may have an opportunity of taking into consideration the reasons assigned by the President for declining to accede to the proposition of the Powers adverted to." (Report of the Bremen Minister-Resident at Washington, August 19, 1856.)

In England the proposition of the United States was not favorably received. The ministerial papers designated Mr. Marcy's Amendement as "a monstrous presumption." The Times alone admitted, that the Paris Declaration did not contain the full completion of the principle and expressed the opinion, that England had no grounds to oppose the further extension of the principle, which offered protection to commerce in time of war; on the contrary, England, being the greatest commercial country, was chiefly interested, that Commerce should be secured against all obstructions; but from this very reason the neighbouring states, which still regarded with jealousy the commercial superiority of England, had opposed the full carrying out of the principle, and it had therefore been considered expedient to secure at least one object, the abolition of privateering; however, now that the United States had, for the first time, advanced so important a principle, it was to be hoped, that the question would be taken into the most serious consideration. (Report of the Bremen Minister-Resident, London, August 23, 1856.) *) Lord Palmerston, in the meantime, surprised the world by a speech, held at Liverpool on the 7th of November 1856, in which he expressed the hope: "that these relaxations of former doctrines .... which have since been ratified by formal engagements, may perhaps be still further extended; and that, in teh course of time, those principles of war, which are applied to hostilities by land, may be extended, without exception to hostilities by sea, so that private property may no longer be the object of aggression on either side." (No. X; see also Lord Palmerston's speech of February 5, 1860. No. XXVII, note.) These words, though hypothetically expressed, yet coming "from the lips of the Primeminister", were considered by the Hanseatic Minister at London as a guarantee for the future

*) See leading article in the Times of December 10, 1859, in which the principle approved of in August 1856 was vehemently attacked [No. XXIII].

adoption of the principle (Report of November 14, 1856). Mr. Richard Cobden in three letters, dated November 8, December 8 and 15, expressed himself strongly in favor of Mr. Marcy's Amendment. [No. XI.]

The French Government showed great inclination "to accede to the great principle, proposed by the United States." In a note, dated the 14th of September 1856 and addressed by Mr. Mason, the American Ambassador at Paris, to Count Walewski, the American propositions are most ably developed. On the 11th of November it appeared, that the conclusion of a convention between France and the United States was "near at hand." "Count Walewski," states the report of the Hanseatic Minister at Paris of November 11, 1856, has undoubtedly come to a previous understanding on the subject with the English Government and Lord Palmerston, either persuaded or perhaps coerced by the French Minister, evidently intended to be before hand with his Liverpool speech. That speech is the true echo of the Note, which Mr. Mason has transmitted to the French Government." The French minister for foreign affairs did not sent a written reply to Mr. Mason's Note of September 14, but told him positively, that France was ready to conclude a convention; and on the 3d of November Mr. Mason could report to Washington, that Count Walewski had assured him of his intention to re-state to him in writing, before the 12th inst., the readiness of France to conclude a convention, so as to enable the President to announce the fact in his message. However, the negotiations between France and England, without whose consent Count Walewski (in consideration of the political differences then prevailing between the two governments) would not further proceed in the matter, were protracted and prevented the French Minister from fulfilling his promise. Nevertheless, Mr. Mason could report again on the 7th and 17th November, that the French Government had not altered their views, and that Count Walewski, to whom he had read his report of the 3d relating to his interview with that minister, had fully approved the correctness of the same. At Count Walewski's request, Mr. Mason wrote on the 6th of December to his colleague in London, Mr. Dallas, asking him, if his instructions permitted him to do so, to use his best efforts with the British Government in order to bring the American propositions to a speedy and successful termination. Mr.

Dallas replied on the 8th of December, that he was instructed by Mr. Marcy to enter upon the subject only in case he was induced to do so by members of the British Government; and further, that in his own opinion, the United States should never and under no condition whatever surrender the right to fit out privateers. Mr. Mason of course could not ask his colleague to act in contradiction to his instructions, and he therefore confined himself in his dignified reply of the 11th of December to express his regret, that Mr. Dallas was prevented by his instructions, as well as by his personal views to co-operate with him in this important matter. Moreover, Mr. Dallas' communication was of so private a nature, that Mr. Mason was not in a position to report upon the same to his Government. In explanation of the peculiar instructions, referred to by Mr. Dallas, it was presumed, that they had been given, because England, at the time, was not represented at Washington. But more strange still, Mr. Marcy sent no reply whatever to Mr. Mason's four despatches of September 17, (in which he had transmitted a copy of his note to Count Walewski of September 14) November 3, 7 and 17, and consequently, during the time these important negotiations were carried on, and, as it appeared, to a successful termination, the American Ambassador was left for weeks without instructions; under these circumstances it might well be doubted, whether the Washington cabinet seriously intended to act up to its propositions. "It is not improbable," says a Report from Paris of January 21, 1857, "that the matter might have progressed more speedily, if the American Minister at London, immediatedly after Lord Palmerston's Liverpool speech had taken it up with energy; now it will remain in abeyance until Mr. Cobden or some other Member brings it again forward in Parliament." Nevertheless, the ultimate adoption of the American proposition by the English Government was not despaired of at Paris, and a diplomate residing there at the time expressed an opinion, that the apparent disinclination of the English Government to enter upon the question was less owing to political considerations in regard to America, than to the possibility of a future war with France. "And," says a Report from Liverpool of January 30, 1857, "England will put off her decision till the ratification of the treaty respecting the Central-American question, which it appears the Washington Senate mean to oppose, has taken place."

Russia in a note of the Russian Chargé d'Affaires at Washington, dated November 28, 1856, renewed its former declaration: "that the Emperor entirely concurred in the views, expressed in Mr. Marcy's Despatch of the 28th of July." [No. VI.]

Portugal intended to adopt the American propositions, although, according to the report of the Bremen Minister-Resident of November 13th, Count Lavradio, the highly esteemed Portuguese Minister at London, from information he had recently received from the Foreign Office, was inclined to think, that the English Government were not disposed to agree to the propositions, laid down in Mr. Marcy's note. The Cabinet of the Netherlands, says a Report from Paris of November 11, 1856, has ten or fourteen days ago, in consequence of an enquiry which Count Walewski addressed to the Dutch Minister, been induced to state its opinion. "That opinion expressed, as might be expected, a cordial approval of the American proposal." The then Dutch Minister at Washington, Mr. Du Bois, (who was soon afterwards transferred to Copenhagen) had frequently discussed the question with Mr. Marcy and he now advised his Government to accept openly and in a binding form the American principles; however, the Dutch Government took a different view, and on the 1st of September 1856 transmitted a polite but evasive reply to Washington, which concluded with the following words: *„L'accueil que plusieurs puissances paraissent déjà accorder aux propositions semble légitimer aussi l'espoir du Gouvernement du Roi, de pouvoir y accéder en temps opportun."* (Report of the Hanseatic Minister at Copenhagen, December 17, 1859.)

President Pierce in his Message to Congress of the 2d of December 1856 (No. VII.) laid so prominent a stress on the question of Maritime Law, that the doubts, which had arisen as to the seriousness of the American endeavours, were greatly removed. He had wished to announce in the Message the formal adhesion of France, which Count Walewski had promised, but, which promise, as Mr. Mason so deeply regretted, the French Minister was prevented from fullfilling, owing to the want of a previous understanding with England. (Report of the Hanseatic Minister Resident at Paris, December 20, 1856.) The Message announces the entire approval of Russia and adds: „That assurances of a similar purport have been received in relation to the disposition of the Emperor of the French."

Mr. Marcy, on being informed of the personal views of his Ambassador at London, combatted the same in a private letter of January 4, 1857 [No. VIII], in which he particularly and judiciously explained: "that, had the United States declined concurrence in the declaration simply because it abolished privateering, they woud have been placed in a state of isolation, while now, that they had gone a step further, all nations except England stood on their side." After this explanation Mr. Dallas would certainly consider the proposal, with the principle of which he disagreed, an able political move on the part of his chief.

Under these circumstances the Hanseatic Ministers at London, Paris and Washington did not deem it expedient to take further proceedings; they were of opinion, that the then state of political affairs afforded no favorable opportunity to their single and unaided efforts for the practical carrying out of the principle, however desirable its attainment might be in a theoretical point of view. Their informations in regard to the intentions of the British Cabinet made it clear to them, that no Government would be induced to move alone in the matter; and several discussions, which the Hanseatic Minister at Paris had on the subject with Lord Cowley, Count Walewski and Mr. Mason confirmed him in the conviction already expressed: "that the present moment was most inopportune for the opening of any negotiation at Washington." Both Lord Cowley and Count Walewski assured the Hanseatic Minister: "that there seemed great hope that the Powers, which had signed the Paris Declaration of 1856, might speedily come to an agreement regarding an additional article thereto, which should embrace the adoption of the fifth principle desired by the United States; and that the Hansetowns should also, as previously, be invited to give their adhesion to the additional article." „Mr. Mason has on enquiry received the same answer from Count Walewski, and Mr. Mason thinks that his Government will content itself with this general declaration of adhesion, though it would prefer the form of a separate convention with each state." (Report of the Hanseatic Minister-Resident at Paris, January 6, 1857.) „And," adds a further report of January 21, transmitted by Mr. Schleiden to Bremen, „Mr. Mason is decidedly of opinion, that it would not be expedient for the minor European states to adopt the American propositions by concluding separate conventions to that effect

with the United States, until one of the great naval Powers shall have set the example; and it appears not likely, that Mr. Mason should offer that advice, merely from the so natural desire to make his name immortal in the history of international law by concluding the first treaty on the subject." In the meantime Mr. Schleiden, on his return to his post as Minister-Resident at Washington in January 1857, was authorized to declare to the Secretary of State, that the Senate concurred in the principles proposed by America and that they were only prevented by the state of the pending negotiations to bind themselves formally by treaty; and, also, to request, that the second part of the American propositions, relating to the law of contraband, should be further explained, so as to enable them also to take that important question into their consideration. Other Reports from the Hanseatic Ministers confirmed the impression, "that, while it appeared justified, both formally and in regard to the then political state of things, to declare in general the full approbation of the principles, it would not be expedient to accelerate any definitive proceedings."

In the mean time a great change had taken place in the public opinion of America in regard to the propositions of Mr. Marcy. The former English Ambassador at Washington, Mr. Crampton, had already before his recall indicated that this was likely to occur, and he had expressed an opinion that the more this became apparent, the more the aversion of the English people to the American propositions would recede. (Report of Mr. Schleiden, Liverpool, January 30, 1857.) Several of the leading American newspapers took up the views, which Mr. R. W. Russell, an English lawyer residing in America, had stated against Mr. Marcy's Amendment in a Pamphlet, printed at Newyork. *) The pamphlet demonstrated the great danger, in which the abolition of privateering, under whatever condition it might be effected, threatened to involve the United States. Mr. Marcy had been dazzled by the authority of philanthropic statesmen of the old school like Doctor Franklin, in whose times it was impossible to surmise the present expansion of the American trade; and, besides, he had gone in his propositions far beyond the com-

*) The new maritime law, review of Mr. Marcy's letter to Monsieur de Sartiges, by R. W. Russel. Newyork, 1856.

petence of the Government. In consequence, an agitation against all theories of humanity and in favor of the incontestable and for practical purposes indispensable right of privateering sprung up and was carried on with great irritation and vehemence. Nevertheless, the Bremen Minister found on his return to Washington, in February 1857, that the Government still adhered to their propositions. (Report to Bremen, Washington, February 26, 1857.) But President Pierce's time of office was expiring. Just before its termination in February 1857, the Secretary of State, at last, sent instructions to the Ambassador at Paris and empowered him to open negotiations for a formal convention with France. On the 2d of March 1857, Mr. Mason in a very ably written despatch transmitted to Count Walewski the project of a Treaty [No. V, annex], the first article of which contains the four principles of the Paris Declaration, the first with the amendement proposed by Mr. Marcy in his note of July 28, 1856. No explanation is given, why this project was not already transmitted in November 1856. Mr. Mason in his note to Count Walewski very adroitly abstains from complaining that he never received a written reply to his former note of September 14, 1856, but prominently puts forward the opportuneness of the present period of general peace, and the necessity of obtaining the sanction of all civilised Powers to the incorporation of this new and important principle in international law. Mr. Mason privately informed the French Minister, that he should not object to the latter communicating confidentially his note to the Englisch Cabinet. Mr. Dallas, the Ambassador at London, who considered the conclusion of such a Treaty dangerous to the safety of the United States, had not received similar instructions. (Report of the Hanseatic Minister, Paris, March 7, 1857.)

On the 7th of March 1857 Herr von Gerolt, the Prussian Ambassador at Washington, transmitted a note to the Secretary of State, in which he announced the adhesion of his Government to the amendement, proposed by President Pierce in Mr. Marcy's note of July 28, 1856 to the American Ambassador at Berlin, and „*l'appui le plus prononcé*" on the part of Prussia, in case the Americans propositions should be discussed „*en délibération générale*". (Report of the Bremen Minister-Resident, Washington, March 8, 1857.)

In the Senate Mr. Crittenden of Kentucky moved on the 9th of March four resolutions, approving Mr. Marcy's policy and course

of proceedings in relation to Maritime Law, which on the following day were referred to the committee on foreign affairs. However, as the Senate had already on the 12th resolved to adjourn on the 14th, it was evident that no discussions upon them could take place that session. In the mean time the Press wrote violent articles and raised a storm of indignation against the resolutions. (Report of the Bremen Minister-Resident, March 13, 1857.) President Buchanan had entered upon his office; Mr. Marcy retired from the cabinet and his policy was at an end.

The Bremen Minister, who, as yet, had not carried out his instructions, considered it now expedient to wait, until he had informed himself of the intentions of the new cabinet and in his communications with them might act accordingly. (Report of the Bremen Minister-Resident, Washington, March 8, 1857.)

On the 2d of April Mr. Schleiden, considering it inadvisable further to delay his proeeedings, waited upon the new Secretary of State, General Cass, and handed him the Note on behalf of his Government (No. IX.) The Note stated the determination of the Bremen Senate, but that in their action they must also consider their relations to the Great European Naval Powers. General Cass immediately read the Note and appeared to be pleased with its content; he replied, that the present Government had, as yet, not come to any decision upon the question, however, he did not doubt, "that they would adhere to the policy pursued by their predecessors." "It was obvious that some modifications in Mr. Marcy's propositions would be necessary, in order to attain the desired object, viz., the entire freedom of commerce and navigation in time of war. In this respect, he considered it especially necessary, that the right of blockade should be limited to the importation of munition and other contraband of war, for otherwise, should the vessels of the belligerents or neutrals not be permitted to enter or to leave blockaded ports, the abolition of privateering would be of little use. He thought that he might soon be able to enter into more detailed communications on the subject with all the naval powers, but, owing to the disinclination of the English Government to discuss the propositions of Mr. Marcy, he feared, that the matter would not be brought to a speedy and definitive arrangement." Mr. Schleiden observed, that his Government should support any proposition; but,

that, in his opinion, the now proposed modification of the right of blockade, would not abate the disinclination of England; and he hoped that the general adoption of the propositions would not be retarded by this new proposal. (Report to Bremen, April 2, 1857.)

Ten days later, on the 12th of April, Mr. Schleiden reported to Bremen, that the American Ministers, accredited to the five great European Powers, had already been, or would be shortly instructed by General Cass, not to conclude any Treaty respecting maritime law, until they had received further instructions in regard to a stipulation concerning the right of blockade. Without a modification of that right President Buchanan would not conclude any Convention.

And just at that time Prussia and Russia sent in their adhesion. The Prussian Ambassador announced, that his government was ready to conclude a Treaty, even in case the other great powers should hesitate to act without England. Prince Gortschakoff stated in a despatch of the 23d of February (old style), addressed to the Russian Minister at Washington, that the Imperial Government was ready to agree, in concert with all or some of the States, that had taken part in the Paris Conference, to the Convention proposed by President Pierce.

The United States, under President Pierce, had agreed to abolish privateering on the condition, that the other naval Powers should proceed one step further, and accept Mr. Marcy's amendment — now under President Buchanan, they enjoined to the fulfilment of their first condition the acceptation of the second condition, that the other naval Powers should proceed still one step further. And all the while, the Washington Government, although professing to be the foremost in the progress of civilisation and humanity, maintained the right to resort to privateers, which the whole world had abolished, but which they could not surrender, because it was beneath their dignity to keep up a navy for the protection of their coasts and commerce.

"Indeed," states a Report of the Bremen Minister-Resident at Washington of April 27, 1857, "the important question may be considered as adjourned for an indefinite period, if Russia, Austria,

France or Prussia should not deem it expedient to concede, without regard to England, the modification of the right of blockade, now proposed by America." Mr. Dallas at London stated openly, that he was now instructed by the President to discontinue the negotiations in regard to the principles of maritime law. Mr. Buchanan had come to the decided opinion, "that Mr. Marcy had gone too far in his propositions, and that it would be more advisable to withdraw from the discussion, since the United States could not surrender the right of privateering, until they had as powerful a navy as Great Britain." The remarks, which General Cass was reported to have made in reference to the application of Mr. Marcy's principles to the right of blockade, Mr. Dallas declared a "mere mask" to hide the total change, which had taken place in the views of the Government. (Report of the Bremen Minister-Resident, London, May 27, 1857.) A conversation, which the Bremen Minister at Washington had with the Undersecretary, Mr. Appleton, confirmed the above impression and removed the last doubts. "Mr. Appleton," states the Report of the Bremen Minister of June 23, 1857, "appeared rather ashamed to enter upon the discussion, he did not like to touch upon a sore point. The question, he said, had not been fully considered, it had not even been decided, whether Mr. Marcy's propositions would be divested of their dangerous character by the modification of the right of blockade. The conviction was gaining ground, that America must rely for her power and defence on her mercantile marine (that is to say upon privateering), as England relied on her navy. I ventured the remark that I could hardly be brought to believe that the proud Government of the United States should be so weak as to consider her existence depending upon privateers. It is evident, however, that the moment, when the humane propositions of Mr. Marcy might have been incorporated into the law of nations, has for the present and for a long time passed by." *) Now, when it was too late, it was admitted, that the progress might have been secured, if the right moment had been seized. All parties — not excluding the United States, always pre-

*) The same impression was produced on the Russian Ambassador, Monsieur de Stöckl, who was most anxious in his endeavours to forward the reform of maritime law, by a conversation he had on the subject with General Cass in the beginning of February.

suming that their intentions were honest, — had acted without prudence and foresight.

In the House of Commons, Mr. Lindsay, the well known great shipowner, moved, on the 14th of Juli 1857, an address for copies of Mr. Marcy's letter and of any other papers, that may have passed between the British Government and other powers upon the subject of privateering, with the view to enable the House to decide, whether England should stand by the Paris Declaration of 1856, or adopt the American proposition (No. XII.) Mr. Lindsay expressed the opinion, that the Paris Declaration was untenable; that in time of war the entire carrying trade of Englaud would be transferred to neutral bottoms, and that the premium to marine assurances on English ships not under convoy would be increased 10 per cent. Lord Palmerston refused to grant the production of the papers asked for, on the ground, that before Her Majesty Government had given an answer to the amendment proposed by Mr. Marcy, a change had taken place in the Government of the United States, and an intimation had been made, that the new President did not wish that any answer should be sent to the proposition of his predecessor, and that, in point of fact, he wished to consider that communication as suspended and the negotiation not going on. (No. XII.) Lord Palmerston in his speech openly declared his opposition against the principle, which he himself had advanced in his former speech at Liverpool on the 7th of November 1856 (No. X.); he especially pointed out the difficulty to apply in time of war to private property on the sea the same rule which has been applied to property on land, and even maintained that private property was not respected in landwarfare. To the opinion, thus forcibly expressed, Lord Palmerston adhered during the remainder of his official career. In 1860 he stated, with great decision, the same views to a Deputation from the Belfast, Glocester, Hull, Leeds, Liverpool and Manchester Chambers of Commerce (No. XXVII. Note); and in 1862, he admitted in Parliament, that he had entirely altered the opinion, which he had expressed at Liverpool in 1856 (No. XLIX.). The two speeches — this of February 5, 1860, and that of November 7, 1856, — placed opposite to one another, as a London journal has printed them, present the picture of a well considered game of chest, of which both parts are played by one and the same

person. (Report of the Bremen Minister-Resident, London, February 8, 1860.) Lord Palmerston, however, had already on the 14th of July 1857 handed over to his adversaries the chessmen he made use of in 1856.

On the 27th of June 1859, the Secretary of State, General Cass, addressed a voluminous circular despatch to the American Ambassadors accredited to the Great Powers, in which the various questions concerning maritime law were fully and elaborately developed, and in which General Cass endeavoured to prove, that the United States were entitled to the immunities, proclaimed by the Paris Declaration, although they did not agree to the abolition of privateering; the United States could not permit that the great questions of international law should be decided without their co-operation.

The despatch, as Mr. Dallas observed to the English Minister for Foreign Affairs, was written under the impression of a continuation of the Italian war, so "that now, that peace had been restored, it appeared unnecessary to enter into any discussion on the subject." Mr. Dallas had, at the end of July, read the despatch to Lord John Russell, who, in reply, merely stated his opposition to the declaration, that the United States would not permit coals to be excluded from general commerce as contraband of war. Mr. Wright at Berlin also transmitted the despatch to Baron Schleinitz (No. XIII). (Reports of the Hanseatic Minister-Resident, London, August 3 and 4, 1859.)

In the mean time, the war between the Western Powers and China had broken out. Both France and England issued declarations to the effect: that not alone the immunities, proclaimed by the Paris Declaration, should be granted to the States, which had not acceded to that declaration, but, further, that all private property on the sea belonging to Chinese subjects should be considered inviolable, and that both Governments should allow their subjects to continue their trade with the ennemy during the war. (No. XXXIX. Note of the French Minister to the Hansetowns, Mr. Cintrat, of June 30, 1860. Note of the English Chargé d'Affaires to the Hansetowns, Mr. Ward, of July 4, 1860.)

The Prussian Minister-President, Prince Hohenzollern-Sigmaringen, the Minister for Foreign Affairs, Baron Schleinitz, and the

Ambassador at Paris, Count Pourtalès, had expressed themselves in favor of further relaxations in maritime law, as indicated by Mr. Marcy's amendment. Under these circumstances the Hanseatic Minister-Resident at Berlin, Mr. Geffcken, deemed it expedient to draw up a memorandum with the view to induce the Prussian Government to bring the subject before the Conference, then about to assemble at Paris. *) Mr. Geffcken was authorized to transmit this memorandum officially, *"hanseatico nomine,"* to the Prussian Minister for Foreign Affairs.

Two articles in the *"Bremer Handelsblatt"* of October 29, and the *"Weser Zeitung"* of November 1, 1859, gave the first impulse to an agitation, which was taken up by the great shipowners of Bremen (Mr. H. H. Meier and other merchants). On the 18th of November it was resolved to prepare resolutions to be laid before a public meeting of the merchants.

Baron Schleinitz, although inclined to take the matter in hand, yet hesitated to proceed in deference to the demand of England, that no questions excepting those relating to the affairs of Italy should be discussed at the Congress. However, the difficulty thus raised, appeared to be of only a formal nature and of no great weight, for according to a communication, which the American Ambassador at Berlin stated to have received from London, the English Government would not have objected to Prussia bringing forward a proposition to adopt the American principles. Nevertheless, the Prussian Government declined the honorable task, which the Hansetowns desired them to undertake, but Baron Schleinitz intimated, that the States, which were not invited to the Congress, might with great propriety bring the question to the notice of that assembly. The idea thus intimated **) was taken up, and on the proposal of Mr.

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*) On the 4th of November Baron Schleinitz expressed an opinion, that the meeting of the Congress appeared to be secured, but that it was not yet determined, whether, besides the Italian and Bessarabian affairs, which latter question Austria was anxious to have included, other questions would be discussed. Count Walewski was inclined to enter upon the deliberation of maritime law, and at Berlin and St. Petersburg a similar inclination prevailed. However, the indolence of the then direction of affairs at the Prussian foreign office was proverbially known, or as a witty monarch expressed himself: „it was carried on in a state between dreaming and waking."

**) The Belgian Minister at Berlin first called attention to Holland and advised to enter into direct negotiations with The Hague.

Geffcken, the Hansetowns resolved to invite the minor naval Powers to act in concert in respect to any proceedings at the Congress. Holland, as the chief of the minor naval Powers and whose Government had always been most anxious for further relaxations, appeared to be the proper State to take the lead, and Mr. Geffcken was sent on a confidential mission to The Hague to prevail upon the Dutch Government to adopt the plan, proposed by the three Hansetowns.

Mr. Geffcken set out on his mission on the 31st December 1859. Public opinion, in the mean while, had taken the subject in hand and its efficacious assistance was engaged in the carrying out this great Reform.

On the 2d of December 1859 a Meeting at Bremen, convened and attended by the principal merchants and shipowners, passed the remarkable resolutions in favor of the perfect immunity of all private property on the ocean in time of war, and thereby commenced a wide-spread agitation, with a view to induce the civilised world to acknowledge, and practically to adopt these important principles. (No. XVI.)

The Senate of Bremen approved the resolutions and promised their most strenuous support. They expressed themselves: "that the object to be gained, not only accorded with the efforts they had hitherto made, but also with the higher mission imposed upon the Bremen State." (No. XVII.)

The Hamburg Chamber of Commerce fully coincided with the Bremen meeting (No. XVIII.); Lubeck joined her sister cities; the honor of the Hansetowns was engaged in the movement.

With the exception of the Times *) (No. XXIII.) and some few journals the whole European press pronounced itself in favor of the Resolutions.

Mr. Richard Cobden, in a letter, dated Cannes, France, March 22, 1860, and addressed to Mr. Alexander Fritze and the other members of the Bremen Committee, expressed his entire approbation in the following words: "I need not add (for my opi-

*) The article of the "Times" was written by Mr. Wingrove Cook, author of "Letters on China." In reply, the "Times" printed a very able letter from "Mercator." See also the excellent leading article in the "Weser-Zeitung" of December 13, 1859.

nions are not secret to the public) that I heartily concur with you in the object you have in view and I beg most sincerely to thank you for the information, with which you have fortified those, who like myself are disposed to do all in their power to enforce the adoption of your principles."

Several Chambers of Commerce in Germany, Holland, Sweden, Denmark, France and England declared their adhesion to the Bremen resolutions (No. XXXVI to XXXVIII).*) Also the United Prussian Chambers of Commerce (No.XX), and the Hanoverian States; and many distinguished members of the Prussian Parliament supported the resolutions, which were moved to that effect in the Upper-Chamber by the Burgomaster of Dantzic, Mr. Groddeck, and in the Lower-Chamber by President Herr von Rönne. The Hanseatic Minister-Residents at Berlin, London, Copenhagen and Washington, and the German Consuls in the old**) and the new world were indefatigable in their efforts to forward the matter; the Consuls in the United States***) were so far successful as to induce the influential Chambers of Newyork, Baltimore and San Francisco (No. XXIX and XXX) to pronounce themselves in favor of the immunity of private property. The success thus gained was, however, but of a short duration, for in the end the views of the partizans for the right of privateering, supported by the Government of President Buchanan, prevailed.

Mr. Geffcken, who, in a letter dated December 31, 1859, had apprised the Dutch Minister for foreign affairs of the object of his mission, was most favorably received at The Hague, where he arrived on the 1st of January 1860. Baron Golstein, who had already previously endeavoured to induce the French and Prussian Govern-

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*) Lubeck, December 13; Cottbus, December 17; Chemnitz, December 19; Duisburg, December 23; Rotterdam, December 23; Landshut, December 24; Breslau, December 29; Bordeaux and Marseilles, December 30, 1859; Stuttgardt, January 7; Schweidnitz, January 17; St. Johns (New-Brunswik), January 2; Liverpool, January 19; Newyork, February 10; Baltimore, March 25, 1860; Trieste and Riga (No. XVI, Note). The Secretary of the Bremen Committee, Doctor von Lengercke, compiled the propositions, motives &c. of the Committee in a pamphlet: "The international maritime law in time of war. Bremen, 1860."

**) Consul Prange at Liverpool, Consul Wienecken at Gothenburg, Consul Motz at Bordeaux, Consul Michaelsen at Stockholm.

***) All German names: Bierwirth, Schuhmacher, Duisenberg, Rodewald, Plate, Hirsch, Keutgen.

ments to bring the question of maritime law before the Conference, and in which endeavours he had met with the same obstacle, the refusal of England, eargerly entered into the plan of a joint action of those States, which had not been invited to the Congress. He offered to take the initiative by communicating the draught of a note to the minor naval States, viz., Oldenburg, Mecklenburg, the Hanse Towns, Belgium and Denmark, and asking them to accede to the same; and he proposed to instruct the Dutch Minister at Paris to present, in the name and on behalf of the States, which should have agreed to act in concert, the above note together with a memorandum to the Congress. Mr. Geffcken then proceeded on his mission to Brussels, Paris and Hanover, where his negotiations were also successful and had a most beneficial effect in forwarding the progress of the important question.

Baron Golstein acted up to his promise. A circular despatch of January 11, 1860 instructed the Dutch Ministers, to move the Governments, to which they are accredited, to accede to the draught of the collective note, transmitted for their approval in the despatch. Mecklenburg (No. XXXIV) and Oldenburg *) refused their co-operation; Mecklenburg even considered that her rights of sovereignty were impaired by the Dutch proposal. Belgium remained silent — out of regard to her guaranteed neutrality and to England, as King Leopold at the commencement of the negotiations had intimated to the Hanseatic Minister. The Government of Denmark hesitated at first, fearing that they might be involved in a war with Germany, but the influence of more enlightened statesmen prevailed and at last the proposed step was acceded to. (No. XXXVIII.) Hanover (No. XXXVI) and the Hansetowns (Bremen No. XXXV, Lubeck No. XXXVII) declared their entire concurrence. However, as the Congress did not assemble, the proposed joint-action of the minor naval Powers was not brought into operation.

On the 22d of May 1860, the Bremen Minister-Resident at Washington reported that the Sardinian Chargé d'Affaires, who had transmitted to Turin the Bremen resolutions together with the report thereon by the New York chamber of commerce, had, in reply, been

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*) Report of the Dutch Minister for foreign affairs to the King, of May 25, 1860, on the results of the correspondence with the minor naval Powers relative to maritime law.

instructed by his Government to support, in the most efficient and strenuous manner, any endeavours of Bremen with a view to the reform of maritime law. But during the presidency of Mr. Buchanan no result was to be expected. In a letter, addressed on March 31, 1860 to the chairman of the New York chamber of Commerce (No. XXIX), President Buchanan had made use of the same pretext, which Mr. Dallas had previously designated as a "mere mask." The president stated in the letter: "that the subject would only be worthy of serious consideration, if the propositions to abolish war against private property on the ocean were combined with a proposition to secure to merchant vessels a perfect immunity from blockade in any port"; and to a member of the New York chamber of commerce he openly said: „that the United States would not surrender privateering, while he was at the head of the Government." (Report of the Bremen Minister-Resident, Washington, May 22, 1860.)

So long as the United States were determined to uphold the right of privateering, it appeared hopeless to think of effecting any change in Lord Palmerston's views. Nevertheless, when in the summer of 1860 it appeared likely, that, in consequence of the Swiss question, Conferences of the Great Powers might take place, the Dutch Government renewed their endeavours, in order to bring, in conjunction with the minor naval powers, the question of maritime law before those Conferences. (Report of the Hanseatic Minister-Resident, London, June 28, 1860.) In a circular-despatch, dated June 12, 1860, the Minister for foreign affairs, Count Zuylen de Nyeveld, informed the Dutch diplomatic agents, that the Cabinet of The Hague "had never lost sight of the question," that they considered a Congress to be the most efficient forum to discuss the same, but that, in case the expected Congress should not assemble, they were prepared to take other steps. *) (Report of the Hanseatic Minister-Resident, Copenhagen, September 19, 1860.) However, no further

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*) The then Dutch Minister at Copenhagen, Mr. Du Bois, in his reply of July 7, 1860 to the circular-despatch of Count Zuylen, expressed his satisfaction; *„que le Gouvernement Neerlandais n'est pas d'avis de laisser reposer l'affaire importante de l'extension désirable à donner au droit maritime adopté en 1856 jusqu'à la nouvelle réunion d'un Congrès, mais qu'il a l'intention, après l'initiative au commencement de cette année, de tâcher d'atteindre par une autre voie le noble but qu'il se propose."*

steps were taken by the Dutch Government; but Mr. Rochussen, the successor of Mr. Du Bois at Copenhagen, who at his former post in Paris had been most active in forwarding the reform of maritime law, expressed his conviction, that Count Zuylen would have been easily induced to proceed, if the possibility of a practical result could have been shown to him. *)

In August 1860 the question was again taken up in England. Both England and France had in March, during the war with China, proclaimed the principle of the inviolability of private property on the sea, because it suited the commercial interests involved in that war. The select committee on merchant shipping, amongst the members of which were Mr. Milner Gibson, Mr. Cardwell, Mr. Lindsay and other distinguished men, also reported in favor of the same principle (No. XL and Note.) On the 18th of February 1861 a debate arose on this report in the House of Commons (No. XLI), which denotes a considerable progress in parliamentary opinion. Mr. Lindsay, who had taken a prominent part both in the Committee and in the House, in the autumn of 1860 went to America and there renewed the agitation, which he had entered upon in England. He attended and spoke at several meetings, convened by the most influential Chambers of Commerce (at Boston, September 24, at Newyork, Oct. 9, &c. &c.), and although his views on maritime law in time of war made some impression upon public opinion, yet, in regard to the pratical carrying out of the principle, the policy of the Washington Government remained as determined as before. **)

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*) Mr. Rochussen, in a despatch, which he addressed on the 30th of November 1860 to his chief, Count Zuylen, asked that statesman, why it was considered necessary to wait for wars, and at their termination to assemble Congresses, in order to adopt principles, condemning the very proceedings, which the war had brought about. Mr. Rochussen further called attention to Mr. Lindsay's voyage to America, to the speeches in Parliament and to the fact, that the President of the Board of Trade, Mr. Milner Gibson, had been the chairman of the select committee, which had reported in favor of the immunity of private property; and under these circumstances he advised the Minister to declare, by means of a mere exchange of diplomatic notes, the principles of maritime law, which the contracting parties should agree to recognize and to observe between themselves.

**) A report of the Hanseatic Minister-Resident at London, October 26, 1860, states: "It ist still asserted by the Foreign Office that Mr. Lindsay has no official mission whatever; and that he undertook the voyage solely on his own account and at the desire of his friends; of course, the Government would afford him every assistance and it was possible that his proceedings might eventually lead to official negotiations." see No. LX. p. 96. note.

But, a few months later, that policy was deeply affected by the great event, which to encounter the whole energy of the North had to be aroused and which, in regard to maritime law, imposed a heavy task upon the statesmen in the cabinet of the new President, Mr. Lincoln. The South in open rebellion against the Union had issued letters of marque! "The right arm of the national defence," as Mr. P. M. Wetmore, at a meeting of the Newyork Chamber of Commerce of June 7, 1860, in reply to the Hanseatic Consul, Mr. Bierwirth, had most emphatically called the right of privateering, was directed against the very men, who had publicly declared or at least silently maintained the necessity of upholding that right. The Bremen Minister-Resident, when invited to take into consideration, conjointly with the Secretary of State and the English Ambassador, Lord Lyons, the legal and commercial questions, that might arise from the proposed closure of the Southern Ports, told Mr. Seward: "that in his opinion the proclamation of President Davis afforded the best opportunity to the United States of gaining the sympathies of Europe by their recurring at once to the propositions of Mr. Marcy." Mr. Seward replied: "that he was not prepared to give a positive answer, but that he should take the suggestion into consideration." (Report of the Bremen Minister-Resident, Washington, April 19, 1861.)

And, a few days later, on the 24th of April 1861, the Cabinet resolved: to accede to the Paris Declaration, without any reservation or amendment whatever, by means of separate conventions. By the steamer, which left Newyork on the 27th, the necessary instructions and full powers to treat were transmitted to all the Ministers accredited to the European Powers.

In the then state of things, the chief object to be gained by the United States was the immediate and universal abolition of privateering by the whole civilised world. This time their policy had no „*arrière pensée*". England and France were inclined to recognize the Southern States; in their view the great conflict within the Union was not a rebellion but a war. To meet this view, to prevent the recognition of the South, was the task imposed upon the Washington Cabinet and to accomplish it, no prize appeared too high. Mr. Seward hoped to obtain his end by surrendering the right of privateering. For, argued the American Secretary of State, if President Lincoln adopts the Paris Declaration, the necessary consequence is, that such adoption must also be binding for the Confederate

States; the new code of international law must also apply to them and their privateers will then be pirates. The European States, in agreeing to the American proposition, would have been obliged to renounce their views in regard to the character of the conflict, they must have „*implicite*“ considered the Southern States as rebels, in accordance with the policy so eargerly desired to be upheld by the Washington Government. Undoubtedly it was the interest of the European Powers to attain the universal adoption of the principles contained in the Paris Declaration. The United States, whose opposition in that respect, it was thought, could not be overcome, had yielded themselves, and Privateering was indeed at an end. The Washington Cabinet did not stipulate for any conditions, neither for a possible one as under President Pierce, nor for an impossible one as under President Buchanan; they merely required, that the important consequences in regard to the position of the South should be accepted. But the effect of these consequences, which had been foreseen, and which was fully appreciated, induced England to oppose the policy of the United States. The other European States, with the exception of Russia, also refused to accept the American proposition, and the moment to engage the United States for the abolition of privateering was again lost, without securing that desirable result. Since the victory of the North and the overthrow of the South, Earl Russell has had ample time to consider, whether the prize, asked by Mr. Seward for the adhesion to the Paris Declaration, namely, the temporary concession that the Southern States were rebels, has been too high in comparison to the permanent advantages, which would have accrued to English interests from the surrender of the right of privateering by the United States.

On the 24th of Mai 1861 the Bremen Minister at Washington had an interview with Mr. Seward respecting the adhesion of the United States to the Paris Declaration. Mr. Schleiden expressed his regret, that the amendments of Mr. Marcy had been withdrawn, and Mr. Seward admitted, that he had acted precipitately and now saw his error. (Report of the Bremen Minister-Resident, Washington May 29, 1861.)

On the 29th May 1861 the American Secretary of State transmitted to Mr. Schleiden the project of a Convention, relating to the acceding of the United States to the Paris Declaration, and

expressed a wish that Bremen should conclude the Convention without loss of time. Mr. Schleiden suggested to his Government, that he should be instructed to endeavour to retain the amendment of Mr. Marcy. (No. XLIV.) He desired to be authorized to that effect, although Mr. Seward had informed him: „that the chief object of the United States in making the proposal was, that Europe should consider and treat the Confederate cruisers as pirates." The Senate of Bremen were of opinion to retain Mr. Marcy's amendment, but not as „*conditio sine qua non*", neither would they wait for other States, but embrace the offered opportunity to conclude the Convention. Mr. Schleiden was accordingly instructed (June 26, 1861), Lubeck and Hamburg also sent him powers to treat (June 27 and 28, 1861), so that in the earlier part of July he was in a position to sign the Convention.

Prussia was until the 29th of June 1861 without official information respecting the American proposition. The newly appointed Ambassador, Mr. Judd, who was empowered to negotiate, did not arrive at Berlin before the 28th of June, and in the mean time the Prussian despatch of June 13 had reached Washington (No. XLIII.). The Prussian Ambassador had not informed his Government of the important decision, the Washington Cabinet had come to.

It was certainly not to be expected, that the Prussian Government, at this time, would make any efforts with a view to carry out Mr. Marcy's amendment. A high functionary of the Foreign Office at Berlin stated, that it would be ridiculous, should Prussia conclude a Treaty recognizing the freedom of private property on the ocean, while England was opposed to the principle. *) As if Frederick the Great had made himself ridiculous by signing the Treaty of 1785. However, it was but too well known, that the Chief of the Prussian Foreign Department, Baron Schleinitz, was too indolent and not likely to go out of his way and without urgent necessity occupy himself with difficult questions of international law, neither would he presume to act in opposition to England.

The new American Minister at Berlin did also not agree with the new policy pursued by his Government. Mr. Judd was of

*) The report of the Hanseatic Minister-Resident at Copenhagen of July 2, 1861, stated: that it appeared both convenient and expedient to conclude Separate Conventions.

opinion, „that Mr. Seward had gone too far," and that his proposition made the impression „as if the United States felt their weakness and endeavoured to strengthen their position by adopting the Paris Declaration." Nevertheless, Mr. Judd considered it his duty to open the negotiations and to lay the project of the convention before the Berlin Cabinet. He was advised by one of his diplomatic colleagues to wait, until he knew what steps Baron Gerold, on the receipt of the despatch of the 13th of June, might take at Washington, and until it was ascertained, whether a Convention, recognizing the immunity of private property, would be concluded with the Hanse Towns, for, in that case, „the Hanse Towns would intercede with Prussia and thereby facilitate her taking the same step."

The colleague of Mr. Judd at Paris, Mr. Dayton, had also up to this time — the beginning of July — not taken any measures to carry out the instructions, which the Secretary of State had transmitted to him on the 24th of April. Mr. Dayton had his own reasons for disapproving the policy of his Government; he expected yet to be authorized to negotiate for the entire freedom of private property from capture, and he was well aware, that if Mr. Seward's present proposal was not accepted, the United States would retain the right to employ privateers. Moreoever, the great object, which Mr. Seward had in view, was not likely to be gained; the French Government, at least, had given a flat denial to the demand: „that the Convention to be concluded should also be considered binding for the Confederate States." On the contrary, the sympathies of France were with the South.

Mr. Adams, the American Ambassador at London, true to the traditions of his family, was most eager to open the negotiations, but soon found that many and great obstacles had to be overcome. He was informed, that the English and French Ministers at Washington were instructed to discuss all questions in relation to neutrality; however, Mr. Seward refused to enter upon the discussion with them.

The proposed negotiations had, therefore, not been opened at all, or had not been brought to a successful termination — with one single exception, which will be noticed hereafter.

On the 15th of July 1861 Mr. Schleiden had the first conference with Mr. Hunter, the Chief Clerk in the State Departement, respecting the Convention to be concluded between the Hanse Towns

and the United States. Mr. Schleiden proposed several amendments to the American project; the first related to an alteration in the wording of Mr. Marcy's proposition *), the second provided that, in conformity with the American practice, the breaking of Blockade should only be established in case the vessel had previously been warned away from the port. **) This second amendment Mr. Schleiden had not been instructed to propose; in general, his amendements were favorably received and Mr. Hunter promised that they should be taken into immediate consideration. For this purpose Mr. Schleiden addressed in the afternoon of July 15 an official Note to Mr. Seward, including his project of the Convention. (No. XLV.)

On the 17th of July 1861 Mr. Seward sent an evasive answer to that Note. „He declined at present to bring the proposed negotiation to a conclusion, although fully appreciating the liberal and enlightened views of the Hanseatic Governments." Mr. Schleiden's further request on the 18th of July: „that Mr. Seward should reconsider his decision," although supported by the Prussian Ambassador, was not complied with. (No. XLVI.)

Mr. Schleiden, at last, proposed to withdraw his amendments and to agree to the Convention as proposed by the Secretary of State. Mr. Seward then definitively declined to negotiate, either with or without the Hanseatic amendments. He told Mr. Schleiden, that political considerations of the gravest nature made it impossible for the United States to conclude the convention; and he expressed his fears that a war with England might ensue. The former offer of the Washington Cabinet had arisen from the desire, that Europe should treat the Confederate States as rebels and her cruisers as pirates; the present refusal arose from the necessity, to excite the fears of England, that, in case of war, the United States themselves would resort to privateering. As to the philantrophic tendency, so repeatedly and so prominently brought forward, it had

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*) The first article of the Convention, proposed by Mr. Marcy, provides: „that the private property of subjects or citizens of a belligerent on the high seas shall be exempted from seizure"; Mr. Schleiden proposed to say: „on sea", as „high seas" might exclude vessels, which were met „near or about the coast." (No. XLV, p. 107 and Note p. 108.)

**) Mr. Schleiden proposed to add to the fourth principle of the Paris Declaration: „and no vessel shall be seized, even in attempting to enter a port so blockaded, till she has been previously warned away from that port."

never been seriously entertained. (No. XLVII.) Mr. Seward officially and in writing communicated his refusal to Mr. Schleiden in a Note of July 23, 1861. (Report of the Bremen Minister-Resident, Washington, July 26, 1861.)

The circumstance, that Mr. Seward still adhered to the instructions, which he had transmitted to his Agents on the 24th of April, afforded some consolation for the failure thus experienced by the Hanse Towns. In accordance with the same, he informed the Prussian Ambassador in a Note of July 16, 1861 (in reply to the despatch which the Prussian Minister of Foreign Affairs had addressed to the Prussian Ambassador on June 13, and which the latter had communicated to Mr. Seward), that the United States were ready to conclude a Convention on the basis proposed by Prussia. He, further, directed the Ambassadors at Paris and London to accelerate the conclusion of the Conventions, respecting the adhesion of the United States to the Paris Declaration. These proceedings on the part of Mr. Seward, Mr. Schleiden was at a loss to reconcile with his refusal to negotiate with the Hanse Towns; but Mr. Schleiden was assured from a reliable quarter: „that the proposal to surrender the right of privateering had never been honestly intended"; in fact, the Secretary of State had in private and confidential communications explained, that his only object in concluding such Conventions was to deprive the Confederate privateers of their international right; that the surrender of the right of privateering was of no great significance even in respect to England, for in case of war with that power, America might easily replace her privateers by a sort of sea-militia, which, though they could not capture, might destroy the enemy's property, and for the destroying of which they might be largely requited. (Report of the Bremen Minister-Resident, Washington July 26, 1861.)

The British Ambassador at Washington, Lord Lyons, declared the readiness of his Government to conclude a Convention with reference to the adhesion of the United States to the Paris Declaration, provided France should also bind herself by Treaty. This announcement was made before the new instructions had been received by the American Ambassador at London. From Paris no further news had reached Washington. — The American Ambassador had received directions from his Government, nearly similar to those,

which Baron Schleinitz had transmitted to Baron Gerold (No. XLIII.), and which, on the 7th of August 1861, the latter had communicated to Mr. Seward. (Report of the Bremen Minister-Resident, Washington, August 9, 1861.)

In the mean time, on the 24th of August 1861, Russia had concluded a Treaty with the American Ambassador at St. Petersburg, Mr. Clay, which stipulated the adhesion of the United States to the Paris Declaration, and consequently their surrender of the right of privateering. The negotiations with England and France, had, on the contrary, totally failed. Earl Russel had at the very commencement of the negotiations put forward the proviso: "that they should in no manner whatever be considered as conceding any alteration in the English views respecting the conflict with the South." This proviso of course struck at the very heart of the American intentions; the Convention now became valueless in the eyes of the Washington Cabinet, for they never meant to surrender the right of privateering without a corresponding equivalent. Mr. Adams could not think of accepting the proviso, which would have put him in the position indirectly to agree to the English view, which accorded the right of belligerents to the Confederate States; he, therefore, declined to negotiate upon that basis and the convention, both at London and Paris, fell to the ground. Mr. Judd at Berlin had addressed a Note to Baron Schleinitz, in which he expressed the desire, approved of by his Government, to conclude a Convention, embodying the principle of the entire freedom of private property on the ocean. The Prussian Government did not reply to this invitation, and Mr. Judd reported to Washington, that he deemed it inexpedient and detrimental to the interests of the United States, to conclude Conventions, merely stating the adhesion of America to the Paris Declaration, but not sanctioning at the same time the principle advanced by Mr. Marcy, that all private property on the high seas shall be exempted from seizure. Mr. Judd openly stated, that the Secretary of State, had, first, adopted Mr. Marcy's amendment, but now, that it could be carried out, was afraid of its consequences. He was most anxious to forward the negotiations at Berlin; but Baron Schleinitz still hesitating to act, it was deemed expedient to wait until the new Minister, Count Bernstorff, who seemed more likely to appreciate the importance of the question, had entered upon his duties at the foreign office. And, considering that the United

States by the Despatch of the 24th of April 1861, were "morally bound", and by the Treaty with Russia had "actually and legally engaged themselves to surrender the right of privateering," it appeared of little consequence, whether they should now also conclude a Convention to that effect with Prussia.

But, on the other side, it was a most strange fact, that, up to the beginning of October, the American Ambassador at St. Petersburg had not reported to Washington, that he had on the 24th of August concluded the Treaty with Russia. The Russian Ambassador at Washington, Monsieur de Stöckl, had certainly, in the mean time, been officially informed that the treaty had been signed, but of the contents of the same he had likewise no knowledge whatever." "Mr. Seward," reported Mr. Schleiden on the 4th of October 1861 to Bremen, "finds in this circumstance a pretext to discontinue any further negotiations with me. He thought it necessary, in the first instance, to be fully acquainted with what had been done at St. Peterburg, for he apprehended that the Russian Government had been merely induced by their friendly regards for the United States to conclude the convention, and that they would withdraw their signature, as soon as they were informed, that the negotiations with England and France had been broken off. He added, that he was the more induced to believe that his apprehensions were correct by the information he had received from Monsieur de Stöckl, to the effect: that the Russian Cabinet had at first merely proposed the exchange of mutual declarations, and only on the urgent representation of Mr. Clay, had consented to conclude a formal convention. Mr. Seward, however, repeated his assurance that he had not, since the 24th of April, changed his opinions on this important question, especially not in regard to Mr. Marcy's amendment, and that he hoped soon to be in a position to renew the negotiations with me. Unfortunately this gratifying declaration offers no guarantee for the further proceedings of the Secretary of State." Mr. Schleiden took the first opportunity to renew his application; but notwithstanding his urgent representations, Mr. Seward peremptorily declined to re-open the negotiations. "The Secretary of State," reported Mr. Schleiden on the 14th of November 1861 to Bremen, "informed me, that, now that England and France had made the conclusion of the convention dependent on restrictions, to which the

United States could never agree, the Government were obliged to suspend at present all further negotiations on the subject with other States. The United States had certainly, on the 24th of August, concluded a Convention with Russia, respecting their adhesion to the Paris Declaration, but, as yet, it had not been decided, whether the Senate should be asked to ratify the Convention. Under these circumstances he could only say, that the Government would be ready to conclude similar Conventions with other States, as soon as the Convention with Russia should have been ratified. Till then the Government must, in case of war, retain the right to issue letters of marque, although of course it would depend upon circumstances, whether they shall resort to that right. It appears, that Mr. Seward expressed himself still more openly to the Russian Ambassador. When that Minister, about three weeks ago, asked him: whether in case of war with England or France the United States should fit out privateers, Mr. Seward immediatedly replied: "of course, that is understood;" and on Monsieur de Stöckl remarking: that in that case the American privateers must take care not to show themselves in the north of the Pacific, for Russia, to which all the ports on that coast belong, would, in accordance with the convention of the 24th of August, treat them as Pirates, Mr. Seward appeared greatly surprised and said: "I never thought of this, I must write to Mr. Clay on the subject." However, the Russian Government themselves were little inclined to ratify the Convention of the 24th of August 1861, and indeed, the Convention has never been ratified.

The United States have, as yet, not gone that one step beyond the Paris Declaration, which Mr. Marcy in his celebrated Note stated as the condition for their agreeing to the same; on the contrary, they still uphold the right of privateering, which in the French Note to the Hanse Towns of July 15, 1792, was stigmatized as *„une espèce de brigandage aussi déshonorant pour les états qui le tolèrent, que pour les sujets qui s'y livrent"*, and which right, since the year 1856, every Power, with the exception of Spain, Mexico and the Great Western Republic, has freely and by its own accord surrendered. Even in regard to the second and third principle of the Paris Declaration, the United States have only in one single official document bound themselves, formally to recognise and observe the same. This recognition, which being the only one is therefore the more

important, is contained in the Note, which Mr. Seward, "by authority of the United States," addressed on the 16th of Juli 1861 to the Prussian Ambassador at Washington, Baron Gerolt, (in reply to the despatch of the Prussian Minister for Foreign affairs to the Ambassador, dated June 13, 1861) and in which he states: "that this Government cheerfully declares its assent to principles 2 and 3 of the Paris Declaration in the present case and to continue until the insurrection shall come to an end and they will be fully observed by this Government in its relations with Prussia." The engagement, thus entered upon, is even in regard to the adoption of the second and third principle of the Paris Declaration but a conditional one; and the United States are, now that the insurrection has been suppressed, again at liberty to take any position in regard to the right of neutrals, which they may deem expedient and advantageous to the various phases of their policy. It may, however, be here remarked in justification of the policy pursued by Mr. Seward, that on withdrawing from the subject, in a Despatch addressed to Mr. Adams on the 7th of September 1861, he expressed the hope: "that the propitious time is even now not distant, when Great Britain will not only willingly and unconditionally accept the adhesion of the United States to all the benignant articles of the Declaration of the Congress of Paris, but will even go further, and, relinquishing her present objections, consent, as the United States have so constantly invited, that the private property, not contraband, of citizens and subjects of nations in collision shall be exempted from confiscation equally in warfare waged on the seas, which are the common highways of all nations." (No. XLII. Note.)

While the Great Western Republic, which, as General Cass declared, had refused to accede to the Paris Declaration, not because the principles adopted therein went too far, but because they did not go far enough, has in regard to Maritime Law been overtaken by all nations and may in respect to this important question be considered as nearly the last amongst the civilized States, the great principle of the entire freedom of private property on the high seas, with which for a time the name of the American Statesman Mr. Marcy was identified, and which now may be designated as the programm of the Bremen Merchants, has been practically carried into effect by three Great European Powers, and is during the

present war observed between themselves as a part of the law of nations. Italy adopted the principle in the new commercial codex of June 25, 1865, which came into force on the 1st of January 1866 (No. LI), and which provides, that the rights secured thereby shall be enjoyed by all States, which, before the breaking out of war, shall accede to and observe the same. And before the commencement of the present war, Austria by the Imperial decree of May 13, 1866 (No. LII), and Prussia by the Royal ordinance of May 19, 1866, also adopted the principle on the basis of reciprocity.*) Prussia, by this act, recurred to her old traditions and to the first recognition of the principle, agreed to by Frederick the Great in conjunction with the Republican Statesmen, Adams, Jefferson and Benjamin Franklin. The Amendment of Mr. Marcy and the Programm of the Bremen Merchants contain in fact the very substance of the stipulations of the Treaty of 1785.

The foregoing statements have clearly shown, that all Naval Powers, with the sole exception of England, are not disinclined, in principle, to the inviolability of private property in maritime warfare. The United States, notwithstanding the temporary vacillations of their policy, which may even induce them, for a time, to adopt retrogressive measures, must be considered, though not bound by treaty, at least bound by honor. Russia has solemnly pledged herself to recognise the principle. France has repeatedly expressed herself in favor of the same, and she cannot but remain true to an idea, which the founder of the empire has proclaimed as his own and the ever lasting sentiment of his dynasty. In fully acting up to the great principle, the French Government would be supported — the only opposition, the selfish desires of the Imperial navy, might be easily overcome by other means — by all classes and all parties. The general applause, with which the Legislative Body received the recent speech of Mr. Garnier-Pagès against the bombardement of Valparaiso, and the hearty assent it accorded to his demand for a reform of maritime law, are sure indications of the public sentiment in France. Italy, Austria, Prussia and the Hanse Towns have proclaimed the principle, not merely for the duration of the present war, but as an

*) Since the publication of the German Edition, the Hanse Towns have also adopted the principle; Hamburg by a Decree of the 9th, Bremen by a Decree of the 11th, and Lubeck by a Decree of the 14th of July 1866.

integral part of their legislation. The Minor Naval Powers have been and will again be ready to act in concert for the practical attainment of further relaxations in the international code. To them is owing that energetic agitation, which has secured the powerful support of public opinion in the old and new world for the reform of Maritime Law.

But certainly the opposition of England has yet to be overcome. All her prominent Statesmen, in and out of office, and most of the Leaders of the different political parties have, till lately, pronounced themselves against the proposed reform. The Earl of Derby is as decidedly opposed to it as Earl Russell. The political importance of the question was fully developed in the speech, which the late Lord Palmerston delivered in the House of Commons on the 17th of March 1862 (No. XLIX). It can certainly not be denied, that the proposed alteration in the law of nations would cause a total change in the present system of maritime warfare; it would in fact limit the same to fights and battles between the navies and to blockades, and it is therefore not to be wondered at, that England should hesitate and refuse to give up a system, under which she has gained her former victories and prostrated the power of her adversaries, and which she considers as the chief cause of her supremacy on the ocean. When interests of such magnitude are at stake, it may be expected from the traditions of England, that she will not yield without fighting.

But, on the other side, it is obvious, that political considerations alone can not decide the question, and that other interests of no less magnitude support the demand for further relaxations in the international code. While the official and political classes desire to retain the present system, the authorities amongst the social economists are unanimous in favor of the new doctrine. Mr. Richard Cobden, who, though he never was in office, has by his successful exertions in liberating trade and industry from the trammels imposed by ancient and mistaken nations, exercised so marked an influence upon the destinies of England, immediatedly pronounced himself in favor of Mr. Marcy's amendment, and his declaration was the commencement of the agitation for a further reform of Maritime Law. The shipowners, in examing their position under the Paris Declaration, could not fail to perceive the danger, to which their interests are

exposed by the partial adoption of the principle: "free ships, free goods." The pratical effect of this alteration, which secures from capture the goods of belligerents under neutral flag, but does not accord them the same protection under their own flag, must necessarily be, that, in case of war or even in cases of apprehension of any interruption of the peace, the carrying trade is transferred to the bottoms of such countries as are likely to remain neutral. England has the largest mercantile marine, and her political position in Europe is so complicated, that she may at any moment, even against her own will and desire, be involved in war. Consequently, the greatest loss must fall upon British commerce and British shipping, while the gain will chiefly accrue to America, which in most cases is sure to remain neutral. These disadvantages are fully acknowledged by all parties; upon them the opposition of Earl Russell and Earl Derby against the Paris Declaration is founded. Mr. Lindsay, when he for the first time, on the 14th of July 1857, brought the subject before Parliament, confined himself to state the position, in which the country has been placed by the Paris Declaration, and left it an open question, whether England should endeavour to recede from the Declaration, or go a step further and adopt the American view. Since then the question thus raised has sensibly advanced. The Select Committee on Merchant Shipping, elected on the 7th of March 1860 by the House of Commons and composed of members, whose authority on questions of political economy is acknowledged, reported on the 7th of August 1860: „that in their opinion the time had arrived when all private property, not contraband of war, should be exempt from capture at sea" (No. XL). Parliamentary debates on this report have taken place nearly every session. As yet no practical success has been attained, but, as is general the case in England, the agitation is slowly but surely progressing and appears to be certain in ultimately gaining its object. The American war has clearly shown, that in the present state of international law the neutrals gain all the advantages; a dozen "Alabamas" upon the Ocean and the whole trade of the belligerents falls into hands of the neutrals. The argument, that the chief power of England consists in destroying the trade of her enemies and thereby compels them to suc-

cumb and make peace, has been conclusively met by showing: "that in the present state of international law the commerce of the belligerent is no longer the vulnerable point, the only class that can be really injured are the Shipowners and in that respect England is the most vulnerable, for she has the largest mercantile marine. Modern wars are decided by great battles and ably conducted campaigns. The naval power of England should, therefore, be concentrated for a great and decisive blow, but not be crippled and frittered away in the protection of English commerce, or in making prey of merchant vessels in all parts of the world. Such a mode of warfare would also seriously affect the financial resources of the country." It is a well known fact, that a system becomes untenable, if its chief supports are withdrawn. And as the chief support of the old English system of sea warfaring, namely, the right to seize the private property of the enemy wherever it can be found on the ocean, is withdrawn by the Paris Declaration, it is obvious, that sooner or later it will be in the interests of England herself to surrender the last remnant of the old system, and, by fully and fairly adopting the new doctrine, exempt from capture all private property, whether it be ship or cargo. It is the more to be desired that England should take that step without loss of time, for, in case of war with America, she might otherwise be induced, in retaliation upon the right of privateering still upheld by that power, to renounce the Paris Declaration, and thus, making the present insecure state of international law entirely depending upon the arbritrary will of one Power, bring about a calamity, the evil effects of which would be felt by the whole world and certainly not the least by England herself. But it is to be hoped that no English Statesman will be found to do so atrocious an act and that the words will remain true, which Lord Napier, on his first public appearance as English Ambassador at Washington, thought proper to address to the American public: "No British Minister will ever repudiate the principles laid down in the Paris Declaration."

The task imposed on those, who are endeavouring to forward the reform of Maritime Law, is as clear as it is intelligible. Whoever has any direct or indirect influence on the Government of a great or a small State should take every opportunity in order to attain the recognition of the great principle, be it in the municipal

laws of his country, or by declarations or formal conventions with foreign States. Regard should be taken that such conventions are binding and reciprocally, but they should be concluded, whenever an opportunity offers, and not be made dependent on the policy pursued by other and perhaps more powerful States. *) The engagement of the minor naval States for a joint-action should be upheld, and they should be ready at any time to co-operate — be it by means of a congress or by other modes of negotiation — for the successful termination of the question. All States should be invited to adopt the principles, which Italy, Austria, Prussia and the Hanse Towns have laid down at the commencement of the present war. The solemn pledge already given by Russia, and the inclination of France to act up to her glorious traditions, should be made binding by formal conventions. No opportunity should be lost to induce America by appeals to her honor, which is deeply affected by her still adhering to the right of privateering, to adopt, by treaty, the principles, which she herself has proclaimed. And, lastly, the agitation for the Reform of Maritime Law, so gloriously begun by Bremen in 1859, should concentrate all its endeavours to overcome the opposition of England. The success, hitherto attained, is an encouragement to proceed further. A righteous cause is sure to succeed in England. It may be slighted at first by the "Times", and it may be opposed from selfish motives by the governing classes, but, if once understood by the public, it will be carried through. And if all signs are not deceiving, the agitation for the freedom of private property on the high seas has gained and is gaining ground in England. Public opinion and the example of other States can not fail to impress her leading statesmen, and the occurrence of any

*) The Committee of the United German Chambers of Commerce have already acted in the above indicated direction. At their recent meeting at Cassel (July 6, 1866) they resolved: "to address a memorandum on the question to the Governments of all Maritime Powers, requesting them to adopt the principle, laid down by Austria and Prussia for their guidance during the present war; and to use their best efforts, that the principle, thus adopted, should be embodied in the international code and be made an integral part of the law of nations." The further proposal of the committee: "to enforce a stipulation in international law, that commercial ports shall be exempted from blockade," appears to be going to an extreme, at least unattainable for the present, and it is to be desired, that it may not endanger the success of the actual agitation.

political event, which should practically demonstrate the benefit, that must accrue to her interests if England took the step, may turn the scales — and the great principle, being adopted by England, is adopted by the World.

HAMBURG, July, 1866.

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